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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER, 1989 TERM

TRENT JASON,

Petitioner,

vs.

ROADWAY EXPRESS, INC.,
A. K. A. R. E. I.,
D. B. A. ROADWAY EXPRESS,
A. K. A. ROADWAY,
A California Corporation; and
BOB MORRILL,
A. K. A. ROBERT MORRILL,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF CALIFORNIA IN AND FOR THE COUNTY OF SAN BERNARDINO

PETITIONER'S PETITION FOR CERTIORARI

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148 pp

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Petitioner, Trent Jason, petitions the Supreme Court of The United States to issue a writ of certiorari to the Superior Court of California, in and for the County of San Bernardino in this case.

STATEMENT OF THE QUESTIONS INVOLVED

1. Whether the California State Courts Erred In Denying Petitioner's Right to Due Process of Law In The Awarding of Attorneys' Fees and Costs To Respondents, As Sanctions Against Petitioner Because:

a. The trial court failed, as a legal requirement, pursuant to California Code of Civil Procedure, section 128.5, to state the reasons why sanctions apply so as to "recite in detail the conduct or circumstances justifying the order;"

b. The trial court failed, as a legal requirement to that statute, not to award sanctions until "after notice and opportunity to be heard;"

c. The trial court failed, as a legal requirement to that statute,

to state how the petitioner's "'actions or tactics'" were "'frivolous'" meaning "(A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party;"

d. The trial court failed, as to California State and United States Constitutional requirements of due process, to provide any form of itemization of these expenses or attorneys' fees as sanctions against petitioner; with nothing in the record existing of such itemization;

e. The trial court failed to conform to the doctrine of stare decisis, as the statement of decision and order conflicts with published, consistent, and uniform decisions interpreting and defining the

relevant statute in this matter.

/

2. Whether the California State Courts Erred In Granting Respondents' Motion For Summary Judgment Through The Trial Court's "Determination" that Petitioner's Cause of Action Against The Respondents For Fraud And Deceit Was "Barred Under The Doctrine of Clean Hands" Because The Decision Was Not Made In Conjunction of The Law; Because None Of The Essential Elements As Represented In Published, Consistent, and Uniform Decisions Were Met To Apply That Doctrine In This Matter Because:

a. Petitioner's act was not intertwined with Respondents' act to bar relief;

b. Petitioner did not intend to defraud, injure, or be prejudicial to respondents, nor did they argue such in their motion

for summary judgment against petitioner;

c. Petitioner did not injure, defraud, or act prejudicial to respondents in petitioner's act;

d. Petitioner did not violate any law, statute, code, or government rule, regulation or ordinance;

e. Respondents actually profited from petitioner's act;

f. The relative culpability of the litigants was a highly relevant matter before relief by petitioner could be barred;

g. The trial court failed to comment on, or even acknowledge petitioner's legal authorities in the formal opposition to respondents' motion for summary judgment, nor did the trial court provide any legal authorities to support its decision against petitioner.

3. Whether the California Supreme Court Erred In Not Granting Petitioner's Petition For Writ of Mandate Ordering The Trial Court To Comply With The Law; Considering That The California Supreme Court Was Required To Do So Because:

a. The trial court is required to make the performance of which the petitioner is entitled to;

b. The establishment of abuse of discretion by the trial court existed and still exists in this matter;

c. There is the showing, in one aspect of this matter, that the trial court violated the Constitutional due process rights of the petitioner;

d. There existed futility in petitioner requesting the trial court, along with the relevant appellate court, to act in this

matter, and there was no other legal remedy when the California Supreme Court denied petitioner's petition for review;

e. The available procedural measures on appeal were exhausted by petitioner;

f. Petitioner had complied with all the necessary requirements for the issuance of the writ;

g. There was the procedural requirement of the California Supreme Court to issue the writ;

h. The writ was necessary to compel the trial court from preventing the failure of justice;

i. The writ of mandate is necessary to protect substantial rights, and with which without, substantial injury would occur;

j. The undisputed facts in this case, supported by sufficient legal

authorities, required the California Supreme Court to command the trial court to act.

All parties to this proceeding, and having appeared in the lower courts, are listed in this caption.

Petitioner's petition for writ of certiorari is supported in the record by Retired Associate Justice of the [California] Court of Appeal sitting under assignment by the Chairperson [California Supreme Court Justice Malcolm Lucas] of the [California] Judicial Council. Also, California Supreme Court Associate Justice Edward Panelli is of the opinion that petitioner's petion for review in the California Supreme Court should have been granted.

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Petitioner, Trent Jason, petitions the Supreme Court of The United States to issue a writ of certiorari to the Superior Court of California, in and for the County of San Bernardino in this case.

REFERENCE TO LOWER COURT DECISIONS

On the instant case, the trial court filed, after taking the respondents' motion for summary judgment under submission for two weeks, a "Statement of Decision," on May 28, 1987, in the Superior Court of California, in and for the County of San Bernardino [, Desert District]. Thereafter, this court then filed its judgment by court on June 17, 1987. [See Exhibits "A" and "B" attached.]

Petitioner appealed this decision and filed a notice of appeal, along with notice designating papers and records for incorporation in record on appeal, to the Court of Appeal for the Fourth Appellate District, from Division Two, on June 12, 1987. [See Exhibit "C" attached.]

Petitioner sought the reversal of the decision, order, and judgment on three counts:

The first count was that the respondents' arguments and evidnece in their motion for summary judgment (which was the basis for the trial court's decision) does not support their defense of the doctrine of clean hands to bar petitioner's cause of action for fraud and deceit against the respondents, and therefore does not deny relief to petitioner; nor does it warrant summary judgment in favor of the respondents.

The second point raised was that the trial court's ruling that petitioner's cause of action was frivolous and totally and completely without merit and ordering summary judgment was also reversible error, as petitioner not only had a triable issue of fact, but also had the sufficiency of the evidence to warrant the jury trial.

The third and final point raised was that the trial court's decision and order that petitioner pay attorneys' fees and

costs, as sanctions in favor of respondents, pursuant to section 128.5 of the California Code of Civil Procedure, is not supported by the facts, and, it also violated petitioner's due process of law rights.

Almost two years later, on May 9, 1989, the above stated appellate court rendered a split decision on the matter. The majority wrote its opinion in favor of the respondents, and Retired Justice Robert O. Staniforth, sitting under assignment by the Chairperson of the Judicial Council (California Supreme Court Justice Malcolm Lucas) wrote an opinion in favor of petitioner. [See Exhibits "D" and "E" respectively attached.]

The decision of the appellate court became formally finalized on June 9, 1989, and whereupon, on that date, petitioner filed a petition for review

in the California Supreme Court.

While this petition for review was before that Court, petitioner prepared and thereafter also filed a petition for writ of mandate on July 17, after having served the trial court a copy of that petition; it being the respondent in that proceeding.

Because of the amount of petitions for review that are filed with the California Supreme Court every week, petitioner was notified by the staff of that Court that only five percent of all such petitions are reviewed, and that, therefore, petitioner would have almost no chance of the matter being reviewed in California's highest court.

Petitioner sought review in that Court on the two mains issues brought out in the appellate court's opinion.

The first point made was that in applying summary judgment in relation to

the doctrine of clean hands, a substantial error of law and facts exist because the appellate court majority's opinion directly conflicts with prior holdings of the Supreme Court, along with published, consistent, and uniform appellate court rulings; which gives serious doubt of a statement of law by the majority's opinion because the ruling by it in this matter has been acted upon in excess of its jurisdiction by not following the doctrine of stare decisis, and also by the majority's failure to discuss prior Supreme Court cases that were introduced to the appellate court, and therefore, petitioner argued for review both to secure uniformity of decision and to settle an important question of law.

The second point was that in applying the award of attorneys' fees and costs as sanctions in favor of respondents, substantial error of law and facts also exist because the appellate court majority's opinion

directly conflicts with the laws written by the California Legislature in relation to sanctions pursuant to the statute involved (California Code of Civil Procedure, section 128.5); besides all of the so many recently published, consistent and uniform appellate court rulings which have interpreted and highly defined that code. Sufficient case law was brought forth by petitioner to reverse the award of sanctions, but, instead, in complete disagreement with not only petitioner, but also with the dissenting opinion of Justice Staniforth, who wrote an eleven page dissenting opinion, the majority ignored those legal authorities.

On July 20, 1989, the California Supreme Court denied petitioner the review of this matter; along with the denial of the writ of mandate upon the trial court, which was denied on September 27, 1989.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The date of the statement of decision and the date, immediately thereafter, of the judgment sought to be reviewed are May 28, 1987, and June 17, 1987, respectively. These two items can be seen in the attached exhibits labeled "A" and "B" in the appendix, hereinafter.

No order respecting a rehearing existed, nor any order granting an extension of time has occured in this matter.

The statutory provision believed to confer on this Court's jurisdiction to review the judgment in question by writ of certiorari is California Code of Civil Procedure, section 128.5, in conjuntion with the Fourteenth Amendment of the United States Constitution and Article One, Section Seven of the California Constitution, along with the judicial policy of stare decisis.

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The instant case comes before the United States Supreme Court in hopes to rectify the substantial and serious errors made in the lower, California Courts in denying petitioner due process rights mandated by state statute (California Code of Civil Procedure, section 128.5), by the California Constitution (Article One, Section Seven), by the United States Constitution (Fourteenth Amendment), and by the judicial policy of stare decisis considering that the United States Supreme Court has previously ruled in relation to the aspect of the application of the doctrine of clean hands - of which the California Courts did not apply in this matter. In relation to sanctions against petitioner, the Constitutional rights of due process of law have been so seriously violated that those rights are questions that fall within the jurisdiction

of the federal judicial system, and, in this matter, the jurisdiction of the United States Supreme Court for resolution.

The fundamental guaranty of due process of law under the Fourteenth Amendment of the United States Constitution is absolute in America. Everyone in this country is entitled to the protection of those fundamental principals of liberty and justice. The power to deprive a person of property can not be delegated to the state government except by compliance of its requirements. The state owes each individual that process which can be identified as due under the Federal Constitution.

Due process is required in this matter because a decision of the state implicates an interest with the protection of the Fourteenth Amendment. The laws operate on all persons alike and cannot subject petitioner to the arbitrary exercise of the powers of the government. Under this

guaranty, not only must a statute (as with California Code of Civil Procedure, section 128.5 in this matter) embrace all persons in like situations, but the classification must be natural and reasonable, to secure petitioner, as a citizen of this country, against any arbitrary and capracious depriviation of one's rights, whether it relates to his life, liberty, or, in this matter, to his property.

The act which is contrary to embracing all persons in like situations, but, instead, upon a particular person or his rights and privileges is actually a sentence than a law, and one which condems without a hearing; as petitioner alleges has occured in this matter. The purpose of due process was to ensure the fair and orderly administration of the laws, and the protection of petitioner against having the government, inclusive of the judicial branch, impose burdens upon petitioner

except in accordance with the laws of the land; inclusive of that applicable statute. The effect of the state court's decision and order in its judgment was to take petitioner's property and give it to another contrary to settled usages and modes of procedure, without notice and opportunity for a hearing.

Beyond the statutory and Constitutional provisions relating to this matter, the doctrine of stare decisis also applies as a matter of federal jurisdiction, because, while stare decisis is not a rule of law, but a matter of judicial and public policy, it thereby has the similar affect of law. The rationale behind these policies is the need to promote certainty, stability, and predictability of the law, especially where the Supreme Court has already rendered a decision applicable to the matters such as these before the United States Supreme Court.

It is the policy of the courts not to deviate from a rule affecting the public where that rule is established by precedent, especially where it is thereafter reinforced by published, consistent, and uniform decisions interpreting and defining applicable laws.

Decisions made by the United States Supreme Court are final and authoritative declarations and binding on all state courts, inclusive of the supreme court of any given state. The right to such a binding is authoritatively supported under the supremacy clause of the United States Constitution.

The United States Supreme Court ruled over a half century ago on the applicability of the clean hands doctrine, and the issues surrounding it, inclusive of establishment of the elements which must exist to sustain it as an affirmative defense to bar relief from a plaintiff. The elements have been in existence for centuries, stemming from

English law which the United States adopted, through the courts, which outlined those essential elements; all seven of which petitioner brings forth in this petition [See Statement of the Questions Involved, Point "2" "a" through "g" and the legal authorities brought forth in the argument amplifying those reasons relied on.]; but of which each had to have existed before the doctrine of clean hands could have applied as an affirmative defense; but of where the trial court and majority's opinion of the appellate court did in fact allow it to be wrongfully applied.

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CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION;

FOURTEENTH AMENDMENT, SECTION ONE

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jusidiction the equal protection of the law."

STATUTES

CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 128.5; AS AMENDED IN 1985 [UNDERLINE INDICATES CHANGES OR ADDITIONS BY AMENDMENT]

"(a) Every trial court may order a party* * *the party's attorney, or both * * *to pay any reasonable expenses, including attorneys; fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or soley intended to cause unnecessary delay.* * *This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purpose of this section:

(1) "Actions or tactics" include, but are not limited to, the making or imposing of motions or the filing and service of a complaint or cross-complaint. The mere filing of a

complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means (A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

(d) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section." [Emphasis original.]

STATEMENT OF THE CASE

[INCLUDING FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED; THE STAGE IN THE PROCEEDINGS IN THE COURTS AT WHICH FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED; THE MANNER OF RAISING THEM; THE WAY IN WHICH THE COURTS PASSED THEM; AND PERTINENT SUMMARY OF SPECIFIC PORTIONS OF THE RECORD WITH SPECIFIC REFERENCES TO THE PLACES IN THE RECORD WHERE THE MATTER APPEARS.]

In July of 1985, petitioner Trent Jason responded to newspaper advertisements for the employee position of dockworker at Respondent Roadway Express, Inc.'s freight terminal located in the incorporated City of Adelanto, California, in San Bernardino County, in the State of California. The advertisements promised a wage rate of eleven dollars an hour.

The employment position advertised also stated "Now Hiring," but actually entailed five different employee applicant meetings with Respondent Roadway Express, Inc.'s employees, agents, representatives, and (in one instance) doctor; taking a duration of

six weeks to be processed inclusive of traveling about one hundred miles in each direction, to and from Respondent Roadway Express, Inc.'s terminal for each of those meetings. None of this was known to petitioner prior to applying for the employment opportunity advertised by this company, until after each of those visits; being notified each time that there would be an additional meeting.

Respondent Roadway Express, Inc.'s pre-employment procedure consisted of five steps: (1) signing the employment register to obtain an employment application; (2) a group employee applicant interview followed by an individual meeting; (3) a security interview, including a lie detector test; (4) a medical examination off the premises, at the company's designated doctor's office location; (5) a six and one-half hour group employee orientation meeting followed by an eight hour work shift, four hours after that

meeting.

Petitioner completed these procedures and was subsequently employed as a dockworker, for the purpose of doing manual labor, at the hourly wage rate of eleven dollars an hour. He was employed from September 4, 1985, through to October 29, 1985, whereupon the company terminated him.

Petitioner alleged that he was terminated because the company alleged that he had refused to become a "full time" employee of the company (Respondent Roadway Express, Inc.). Contrary to what petitioner thought, and was led to believe by respondents, these newspaper advertisements meant of the term "full time" employment that, according to the undisclosed labor contract that the company had with the local Teamsters union, as a newly hired employee, petitioner was actually required to join that local Teamsters union and serve a one year probationary period with the company.

Petitioner alleges that he thought that the term "full time" meant working a normal, forty hour work week. He also alleges that Respondent Roadway Express, Inc., through its personnel manager, Respondent Robert Allen Morrill, represented that there was no requirement to join this Teamsters local union at any given time that petitioner desired, as if there was no required time to join that local union. Petitioner also alleges that he has documentary evidence to establish this material fact.

Most importantly, under the applicable local Teamsters' labor agreement, the wage of the probationary employee was 70% of the existing wage rate. This meant that petitioner would receive only $9.80 an hour, instead of the advertised $11.00 an hour, during that one year probationary period.

Petitioner did not refuse to accept this "full time" employment. Petitioner, alleges, instead, that the company designed,

implimented, and practiced a scheme to defraud a whole class of people, being the employee applicants and subsequently hired employees of Respondent Roadway Express, Inc., by the nondisclosure, false promise, and misrepresentations made by respondents in the newspaper advertisements (that Respondent Roadway Express, Inc. utilized for years, at an expense of over $500,000.00 a year; just for its Adelanto, California terminal alone) and, thereafter, during the employment application procedure.

Respondents, while under federal court order in respect to hiring employees, had utilized its scheme to hire manual laborers for short periods of time during the company's peak period of business, which occured on the undisclosed seasonal basis, and then terminate those surplus employees when business slowed down by utilizing the Teamsters' labor contract as the premise for termination, alleging that these newly

hired employees refused to become "full time" employees, by not joining the local union; while not giving these employees the real opportunity to do so.

Petitioner alleges that, considering that these employee applicants and subsequently hired employees left their previous employer and residence, a hundred miles away, to work and move to this distant location in Adelanto for the promoted "career" opportunity by respondents, it would not be logical to assume that these individuals took the employment position under any belief that it would only be temporary.

Petitioner alleges, in being one of these victimized workers, that he, like so many of the others (inclusive of those with families) became homeless and destitute, having no employment after being terminated and left in this desolated desert area with no funds to pay for bare essentials.

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Petitioner filed his civil complaint on October 29, 1985, in the superior court of California, in and for the County of San Bernardino, [Desert District,] located at 14455 Civic Drive, Victorville, California, 92392-2397; which was filed just before petitioner was terminated from Respondent Roadway Express, Inc. by its personnel director, Respondent Robert Allen Morrill.

Petitioner's complaint entailed one cause of action, for fraud and deceit.

After removal to federal court, in the Central District of California, by respondents, petitioner had the action remanded back to the state court, because the civil complaint alleged a cause of action in tort, not directly related to the local Teamsters' labor contract agreement, because the action dealt with the alleged fraudulent preemployment hiring process of respondents. At that time of being in federal court, petitioner also amended his complaint, and the matter

was remanded back to the superior court on March 17, 1986. Respondents filed a nonopposition to that amended complaint and answered it immediately, thereafter.

Respondents, in investigating the complaint, deposed petitioner for four days, compiling a four volume, 798 page transcript. Within that discovery, respondents discovered that petitioner had falsified his employment application. Specifically, respondents discovered, and petitioner has never denied, that petitioner omitted addresses where he had lived during the preceding three years and the time he had lived at each address; falsely represented he had never been discharged from a previous job; omitted the names of previous employers along with previous periods of employment; and falsely represented that he had attended Stony Brook University in New York State.

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Petitioner stated that his reason for

falsification was that he sought to simplify his employment application and increase the likelihood that he would be hired for the employment position of manual laborer/dock-worker that he had applied for.

Petitioner alleges he did this because he had just previously been in a very serious vehicle accident in which a felony hit and run driver drove a stolen vehicle through an intersection and through petitioner's vehicle, before that person left the scene never to be found again. Petitioner needed to be assured of employment, and considering that he had no criminal record, and had all of the skills, education, capabilities, and work experience for the employment position, that he would not only benefit from being employed, but so would the company. (It turned out that petitioner became one of the company's star employees in his employee-employer relationship with respondents.)

Petitioner represented to respondents,

when being deposed, that he did not intend to defraud, injure, or be prejudical to respondents in his act of falsification of the employment application, when deposed in January of 1986. In fact, weeks later, after being terminated by respondents thirteen weeks before, Respondent Roadway Exrpess, Inc., through its representatives, offered petitioner his employment position back.

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A year and a half after petitioner filed his original complaint, and just before the jury trial date that was scheduled, respondents filed their summary judgment motion, contending that the entire action was barred by respondents' "affirmative" defense of petitioner's unclean hands in his falsification of that employment applicaiton.

Petitioner filed a formal and timely made opposistion to that motion, along with the relevant points and legal authorities.

Respondents thereupon filed an amended statement of "undisputed" facts along with their reply to petitioner's opposition. Petitioner then filed a formal response to that reply, and oral testimony was given by both sides during the hearing on the motion.

The trial court judge, Honorable Donald R. Egan, took the matter under submission, and, two weeks later rendered a decision, taking the position of respondents and granted the summary motion in the trial court's statement of decision and subsequent judgment by court.

However, the trial court failed to provide any legal authorities what-so-ever at any time prior to its decision; nor in the statement of decision or judgment. The trial court also failed to provide any recitation as to why it alleged that the cause of action in petitioner's complaint and first amended complaint was frivolous and completely without merit. Yet, still,

respondents nor the trial court ever provided any itemization of that enormous sum which was awarded as sanctions against petitioner; or to recite the reasons why sanctions even applied. In fact, the trial court failed to even allow petitioner the right to argue how this sum of over eighty thousand dollars in sanctions came about, there was (nor is there at this time) nothing in the record to support this sum, and no hearing was allowed for petitioner to argue these sanctions or the reason why they were awarded.

All of these circumstances were in violation of not only the California State and United States Constitutions, they were in direct violation of California Code of Civil Procedure, section 128.5, which was amended in 1985, and outlines the required procedures of due process of law in matters involving sanctions. (see pages 15 through 17 in regards to the Constitutional and [California] statutory provision, supra.)

Petitioner, after receipt of the statement of decision [Exhibit A, attached hereinafter] and with the judgment by court [Exhibit B], filed an appeal in the California Court of Appeal Fourth District, Division Two located at 303 West Fifth Street, San Bernardino, California 92401, on June 12, 1987, [Exhibit C]. At that time, petitioner raised the issues relating to the doctrine of clean hands, summary judgment, and the awarding of sanctions; inclusive of the argument that the act of awarding these sanctions violated petitioner's due process rights in that matter.

Petitioner formally, properly, and on a timely basis, filed his opening brief, respondents filed their response, and then petitioner filed his reply. After oral testimony, the court wrote a split decision, on May 9th, 1989 [Exhibit D for the majority opinion and Exhibit E for the dissenting opinion].

Essentially, the majority's opinion, based upon the presiding Justice Joseph B. Campbell and Associate Justice Thomas E. Hollenhurst, represented that the decision was based on the fact that "the trial court considered the admitted misrepresentations in the employment application and found that they establish the unclean hands defense as a matter of law."

Petitioner, having thirty days before that decision became finalized pursuant to California rules of court, filed a petition for rehearing in formal and proper fashion and on a timely basis. However, that petition was immediately denied by that appellate court.

Thereupon, petitioner immediately filed a petition for review, on June 9th, 1989 with the State of California Supreme Court, [Case numbered Civil S010512] located at the State Building, Room 4250, San Francisco, California 94102.

Also, because petitioner was informed by the staff of that court that only about five percent of all petitions for review are granted by the California Supreme Court, petitioner also prepared a petition for writ of mandate, having the superior court as the respondent in that matter; and having it properly served on that court on July 6th, 1989; thereupon filing this petition for writ with the California Supreme Court on July 17, 1989 [Case numbered Civil S011124].

On July 20th, 1989, the petition for review was denied, and on September 27, 1989, the petition for writ of mandate was also denied, by the California Supreme Court, [Exhibits F and G, attached, respectively]. Petitioner thereupon filed this petition for writ of certiorari, after having served repondents in this matter three copies of this petition, in the Supreme Court of The United States, pursuant to this Court's rules. This is where the matter now stands.

LEGAL ARGUMENT

1.

The California State Courts Erred In Denying Petitioner's Right To Due Process of Law In The Awarding of Attorneys' Fees and Costs To Respondents, As Sanctions Against Petitioner for each of the five following reasons:

A. The trial court failed, as a legal requirement, pursuant to California Code of Civil Procedure, section 128.5 [as cited previously, herein] to state the reasons why sanctions apply so as to "recite in detail the conduct or circumstances justifying the order."

> "An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order." ..... The court must state the specific circumstances giving rise to the award of attorneys' fees, and state with particularity the basis for finding those circumstances amount to "tactics or actions not based on good faith which are frivolous or which caused unnecessary delay." The court's written order should be more informative than a mere recitation of the words of the statute.

Fegles v. Kraft (1985) 168 Cal.App.3d 812, 816; 214 Cal.Rptr. 380.

> The [California] Legislature clarified the condition under which sanctions may be awarded by its amendment to section 128.5 in 1985. .....Under the current version of section 128.5, once a party shows that his action was arguably meritorious (under the circumstances and in light of existing standards for the particular area of law within which the action was taken), the logical conclusion is that the party's motive was probably not soley to harass or cause unnecessary delay, and that sanctions are probably not warranted.

Weisman v. Bower (1987) 193 Cal.App.3d 1231, 1237.

> The purpose of section 128.5's provision for a recitation of the facts justifying a sanctions order is to fulfill the "rudiments" of due process required for governmental imposition of a penalty upon an attorney or party - both for due process' own constitutional sake and to ensure that the power conferred by the statute will not be abused. (See in re Marriage of Flaherty (1982) 31 Cal.3d 637, 652-654; 183 Cal.Rptr. 598, 646 P.2d 179; O'Brien v. Cseh (1983) 148 Cal.App.3d 957, 962; 196 Cal.Rptr. 409. Moreover, in some cases the court's recitation will be an invaluable aid to a reviewing court

> determining whether the trial court abused its discretion in awarding sanctions. (Cf. Miramar Hotel Corp. v. Frank B. Hall & Co. (1985) 163 Cal.App.3d 1126, 1129-1130; 210 Cal.Rptr. 114 (concerning the necessity for a statement of decision where required by [California] Code Civ. Proc., § 632.).)

Lavine v. Hospital of The Good Samaritan (1985) 169 Cal.App.3d 1019, 1029; 215 Cal.Rptr. 708.

B. The trial court failed, as a legal requirement to that statute, not to award sanctions until "after notice and opportunity to be heard."

The applicable statute involved [California Code of Civil Procedure, section 128.5] requires that "Expenses pursuant to this section shall not be imposed except.... after notice and opportunity to be heard." The trial court awarded sanctions in a sum of over eighty thousand dollars without notice of the intent to award such sanctions or thereafter giving petitioner any

opportunity to dispute those sanctions; especially that hugh sum awarded without any itemization, and without the case having ever reached trial.

C. The trial court failed, as a legal requirement to that statute, to state how the petitioner's "'actions or tactics'" were '"frivolous'" meaning "(A) totally and completely without merit or (B) for the sole purpose of harassing an opposing party."

> Whether a party has a meritorious cause of action is not a proper basis for imposing sanctions pursuant to [California] Code Civ. Proc., section 128.5. The fact that an action is determined to be "without merit" does not automatically place it in the catagory of frivolous.

Atchinson, Topeka & Sante Fe Ry. Co. v. Stockton Port. Dist. (1983) 140 Cal.App.3d 111, 117; 189 Cal.Rptr. 208.

> "The Legislature did not intend, in passing section 128.5, to chill the valid assertion of a litigant's rights against any defendant. For this reason, sanctions should not be imposed except in the clearest of

cases."

Lesser v. Huntington Corp. (1985) 178 Cal.App.3d 922, 935; 219 Cal.Rptr. 562; citing Atchinson, supra.

> Even after defining frivolous the court cautioned, ". . .any definition must be read so as to avoid a serious chilling effect on the assertion of litigants' rights . . ." and therefore "the power to punish attorneys. . .should be used most sparingly to deter only the most egregious conduct."

Luke v. Baldwin-United Corp. (1985) 167 Cal.App.3d 664, 669-670; 213 Cal.Rptr. 654.

D. The trial court failed, as to California State and United States Constitutional requirements of due process, to provide any form of itemization of these expenses or attorneys' fees as sanctions against petitioner; with nothing in the record existing of such itemization.

In Lesser v. Huntington Harbor Corp., supra, at page 930 of 173 Cal.App.3d, the court clearly emphasized the issue of adequate notice prior to the imposition of

sanctions under California Code of Civil Procedure, section 128.5 is mandated not only by statute but also by the provisions of both the Fourteenth Amendment of the United States Constitution, and, Article One, Section Seven, of the California Constitution: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens or the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Without any itemization of the attorneys' fees as sanctions against petitioner, and instead only a monetary sum represented by respondents, it is highly disputable as to the true, correct, and accurate monetary sum that is alleged by respondents as attorneys' fees in this matter, besides the fact that there was no

hearing allowed in regards to the awarding of sanctions. Therefore, there is no actual evidence that these attorneys' fees exist in this hugh sum of over eighty thousand dollars.

American Jurisprudence [, Second Edition, Volume 16A], section 847, at pages 1058-1059, represents due process of law in relation to evidence and presumptions with a general statement of the necessity of evidence:

> Due process is absent if a party is deprived of his property or liberty without evidence having been offered against him in accordance with established rules. .....To judge in a contested proceeding implies the hearing of evidence from both sides in open court, a comparison of the merits of the evidence, a conclusion from the evidence of where the truth lies, the application of the appropriate laws to the facts found, and the rendition of judgment accordingly.

American Jurisprudence [, Second Edition, Volume 16], section 311, at pages 830-831, represents the limitations of the courts under the provisions of the United States

Constitution:

> The courts, like other agencies of the government, are subject to controlling constitutional provisions and valid existing laws; and in performing judicial functions, courts must be careful to keep within the constitutional limits of their own powers and to proceed by due process of law. They must carefully abstain from exercising any power that is not strictly judicial in character, and which is not clearly confided to them by the Constitution. .....
>
> Under all circumstances, it is the imperative duty of the courts to support the Constitution, and no court has the right to declare any public policy that clearly contravenes or nullifies the rights declared in the Constitution. Accordingly, courts are without power to deny a citizen rights guaranteed to him by organic law. Courts have no power to tamper with the Constitution.

E. The trial court failed to conform to the doctrine of stare decisis, as the statement of decision and order conflicts with published, consistent, and uniform decisions interpreting and defining the relevant statute in this matter.

In applying the award of attorneys' fees and costs in favor of the respondents, as sanctions, substantial errors of law and facts exist because the trial court's decision conflicts with not only the relevant statute and Constitutional provisions, but also with the highly relevant legal authorities that were brought to the attention of the trial court in petitioner's opposition to defendants' motion for summary judgment; the trial court, having taken the matter under submission for two weeks, failed to comment on these authorities; and the trial court failed to provide any authorities at all in its statement of decision and order.

The ruling in this matter has been acted upon in excess of its jurisdiction by not following the doctrine of stare decisis and by the trial court's failure to discuss those prior cases that were introduced to it, or to follow the rudiments of due

process requirements represented in the relevant statute and as interpreted and highly defined in those legal authorities.

Witkin's California Procedure [, Third Edition, Volume 9], section 793, at pages 766 and 767 represents that:

> Probably the strongest reason for overruling a decision is that it is contrary to a statutory provision which was either not discovered or was known but ignored in the opinion. ....."Laws are not made by judicial decisions. The court simply determines the rights of the parties to the action in that particular controversy. It is not part of its purpose even to declare the law. It simply applies to the controversy the law as it exists when the alleged rights or liabilities accrued."

Witkin's California Procedure, supra, [, Third Edition, Volume 9], section 797, at page 772, represents that:

> [A] decision which is unsupported by authority or is contrary to the great weight of present authority is probably wrong in principal or inconsistent with modern social or economic policy.

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2.

The California State Courts Erred In Granting Respondents' Motion For Summary Judgment Through The Trial Court's "Determination" that Petitioner's Cause of Action Against The Respondents For Fraud And Deceit Was "Barred Under The Doctrine of Clean Hands" Because The Decision Was Not Made In Conjunction of The Law, Because None Of The Essential Elements As Represented In Published, Consistent and Uniform Decisions Were Met To Apply That Doctrine In This Matter Becuase of The Following Seven Elementary, But Substantial Reasons:

A. Petitioner's act was not intertwined with respondents' act to bar relief.

Although petitioner falsified the employment application to simplify that application so as to ensure that he would more likely be employed by respondents, this act was not directly related to the fraud and deceit of respondents in their design, implimentation, and practice of a scheme to defraud a whole class of people, being the employee applicants, and thereafter the subsequently hired employees, of which petitioner was a member of that

class. While the two seperate acts of petitioner may have happened at approximately relevantly close times, this was incorrectly assumed by the trial court to therefore be relevantly connected.

Twenty-five years ago, the [California] appellate court ruled on this relationship, or lack of it:

> It would amount to a straining of the [clean hands] doctrine to hold that defendants could escape liability for tort because [Plaintiff] Fiberboard breached its contract or because it was guilty of fraudulent misrepresentations. The wrong done to Fiberboard, which is the basis of its cause of action for damages, is independent of the transaction arising from the alleged breach of contract or misrepresentations. To hold otherwise would be to sanction an assault upon a person who has perpetrated a fraud or breached a contract with the assaulter. Retribution for Fiberboard's breach of contract or fraudulent misrepresentation, if such existed, cannot be vindicated under the doctrine of clean hands.

Fiberboard Paper Products Corporation v. East Bay Union of Machinists, Local 1304,

United Steelworkers of America AFL-CIO (1964) 227 Cal.App.2d 675, 729.

And the California Supreme Court ruled, almost three quarters of a century ago:

> For a wrongful act to defeat a suit under the clean hands doctrine, it must be so intimately connected to the injury of the defendant with regard to the matter for which plaintiff seeks relief, as to make it inequitable to accord him such relief.

Bradley Co. v. Bradley (1913) 165 Cal. 237, 241; 131 P. 750.

Also, the United States Supreme Court ruled, over a half century ago:

> What does seem clear is that misconduct in the abstract, unrelated to the claim to which it is asserted as a defense, does not constitute unclean hands. The concept invoking the denial of relief is not intended to serve as punishment for extraneous transgressions, but instead is based upon considerations that make for the advancement of right and justice.

Keystone Driller Company v. General Excavator Company (1933) 290 U.S. 240, 245; 54 S.Ct. 146, 78 L.Ed. 293.

Thirty years ago, the California Supreme Court also represented this legal theory when it stated that:

> Misconduct claimed to result in lack of clean hands will not bar relief unless it is closely connected with the matter in which plaintiff seeks equitable assistance and is of such prejudicial nature it would be inequitable to grant him that assistance.

Allen v. Los Angeles County District Council of Carpenters (1959) 51 Cal.2d 705, 815; 337 P.2d 457.

B. Petitioner did not intend to defraud, injure, or be prejudicial to respondents, nor did they argue such in their motion for summary judgment against petitioner, and, therefore, the doctrine of clean hands can not be utilized by respondents as an affirmative defense to bar relief by petitioner.

Petitioner's falsification of the employment application was done without any wrongful intent. Petitioner was destitute and only wanted to obtain

employment, as a manual laborer, so as to be self-sufficient.

Petitioner had all of the skills, experience, knowledge, and capabilities for the employment position of manual laborer/dockworker that he applied for and that he was subsequently hired for; he had no criminal record; he was never late or absent; he performed all of the work duties that the company required and asked of him; he even worked twenty-seven consecutive days with eight to ten hour work days, without a single day off. He became the company's star employee and was not terminated for any wrong doing on his part; not even for having falsified the employment application. Respondents have never denied any of this. In fact, thirteen weeks after terminating petitioner, repondents offered him his employment position back. Thus, the doctrine of clean hands could not possibly apply in

this matter.

> That rule of law applies as a matter of law only where the evidence is susceptible of but one inference that the transaction was entered into with the intent to defraud.

Stone v. Lobsien (1952) 112 Cal.App.2d 750, 758; 247 P.2d 357; Moriarty v. Carlson (1960) 184 Cal.App.2d 51, 56; 7 Cal.Rptr. 282.

C. Petitioner did not injure, defraud, or act perjudicial to respondents in petitioner's act.

As shown in the just previously stated section ["2 (B)"], the respondents were defrauded, injured, or prejudiced, and therefore, the doctrine of clean hands does not apply as an affirmative defense to bar petitioner relief from respondents in this matter. If petitioner's falsification of the employment application had gone unnoticed, there would have been no harm to respondents, even in the future.

The rule of law is very clear that in order for the doctrine of clean hands to apply as an affirmative defense:

> "It must have been conduct which, if permitted, inequitably effects the relationship between the plaintiff and the defendant."

Wiley v. Wiley (1943) 59 Cal.App.2d 840, 843; 139 P.2d 950; citing Bradley Co. v. Bradley, supra.

Petitioner denies that his act was "unconscionable," but even if respondents desire to allege such in their argument, the court has ruled:

> The unconscionable conduct must be of such a nature that it would, if permitted to go unnoticed, result in prejudice to the other party.

Jeong Soon v. Beckman (1965) 234 Cal.App.2d 33, 46; 44 Cal.Rptr. 190.

D. Petitioner did not violate any law, statute, code, or government rule, regulation, or ordinance.

American Jurisprudence [, Second Edition, Volume 27], section 138, on Equity,

pages 674-675, explains that:

> The maxim in question is said not to affect all "sinners" or to embrace general iniquitous conduct and not to comprehend all "moral infirmities," the reason being that courts of equity are not primarily engaged in the moral reformation of the individual citizen. .....Authorities may also be found to the effect that the conduct of the complainant must, if relief is to be denied him, have been wrong in a legal sense as well as in a moral view.

The California Supreme Court ruled, over seventy-five years ago that:

> The clean hands doctrine does not apply to the general morals of the person seeking relief.

Western Union Tel. Co. v. Commerical Pacific Cable Co. (1918) 177 Cal. 577, 585; 171 P. 317; see also McCarthy v. Oakland (1943) 60 Cal.App.2d 546, 552; 141 P.2d 4.

E. Respondents actually profited from petitioner's act.

American Jurisprudence, supra [, Second Edition, Volume 27], section 144, on Equity, at page 681, explains that:

> Where the defendant has profited by the wrongful conduct, he is no position to invoke the maxim.

F. The relative culpability of the litigants was a highly relevant matter before relief by petitioner could be barred.

In the failure of the trial court to consider the relative culpability of the litigants, Retired Appellate Justice Robert O. Staniforth, in part of his extensive dissenting opinion made in the appellate court on this matter, along with the relevant legal authorities which supports petitioner's position in this aspect (of the many aspects that he addresses) in this matter, is represented by Honorable Staniforth that:

> [T]he courts should next consider the relative culpability of the parties. (30 Cal.Jur.3d, Equity, § 29, p. 522.) Equitable relief will be granted despite improper conduct on the part of the plaintiff if it is shown that the defendant is the party most at fault, as, for example, where plaintiff's wrongful conduct was induced by defendant. (Young v.

The Young Holding Corp. (1938) 27 Cal.App.2d 129, 152.

In the present case the trial court failed to evaluate the relative culpability of the parties. The admitted negligible harm to defendant resulting from plaintiff's misrepresentations on his employment application should have been weighed against the harm to plaintiff and to the public resulting from the misrepresentations of defendants.

Nor did the trial court consider "the extent of actual harm caused by the defendant or to the public interest, . . ." (Republic Molding Corporation v. B. W. Photo Utilities (9th Cir. 1963) 319 Fed.2d 347, 349-350.)

The trial court's application of the unclean hands doctrine was completely without basis in fact or law and should be reversed.

G. The trial court failed to comment on, or even acknowledge petitioner's legal authorities in the formal opposition to respondents' motion for summary judgment, nor did the trial court provide any legal authorities to support its decision against petitioner.

The trial court completely disregarded petitioner's opposition and did nothing more to support its decision than enumerate

facts which are undisputed by all parties to the action; those facts being the confirmation by petitioner of the falsification of the employment application with Respondent Roadway Express, Inc.

The trial court failed to set forth the ultimate facts with sufficient particularity to show the ground upon which its judgment rested, and ignored the evidence.

The court ruled, a half century ago:

> It was for the trial court in making its findings to set forth the ultimate facts with sufficient particularity to show the ground upon which its judgment rested.

Clark v. Standard Acc. Ins. Co. (1941) 43 Cal.App.2d 543, 570; 111 P.2d 353, 112 P.2d 298.

> [W]here as in the instant case the trial court refused to consider and weigh evidence upon the erroneous theory that it could not be considered, an appellate court is not justified in affirming the judgment upon the ground that the evidence supports the judgment.

Lewis Food Co. v. Fireman's Ins. Co. (1962)

207 Cal.App.2d 515, 524; 24 Cal.Rptr. 557.

The California Supreme Court ruled on the doctrine of stare decisis:

> "Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction." .....
>
> Under the doctrine of stare decisis, all tribunals exercising superior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of stare decisis makes no sense. The decisions of this [California Supreme] court are binding upon and must be followed by all the state courts in California. .....Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court. ..... This rule requiring a court exercising a higher jurisdiction has particular application to the appellate court. .....It would create choas in our legal system if these courts were not bound by higher court decisions.

Auto Equity Sales, Inc. v. Superior Court

(1962) 57 Cal.2d 450, 456-457; 20 Cal.Rptr. 321, 369 P.2d 937.

3.

The California Supreme Court Erred In Not Granting Petitioner's Petition For Writ of Mandate Ordering The Trial Court To Comply With The Law; Considering That The California Supreme Court Was Required To Do So Based On The Following Ten Essential Reasons:

A. The trial court is required to make the performance of which the petitioner is entitled to.

> "Is is the refusal or neglict to perform an act which is enjoined by the law as a present duty that serves as the very foundation for the proceedings." [Citation.] ....."Where the limits of discretion have been exceeded, the definite command is to act within such limits." [Citation.]

Palmer v. Fox (1953) 118 Cal.App.2d 453, 456; 54 Cal.Rptr. 470.

B. The establishment of abuse of discretion by the trial court existed and still exists in this matter.

> "In a legal sense discretion is abused whenever in the exercise of its discretion the court exceeds the bounds of reason, all of the circumstances before it being considered." [Citation.]

State Farm Mut. Auto Inc. Co. v. Superior Court (1956) 47 Cal.2d 428, 432; 304 P.2d 13.

> "[T]he writ will lie where, under the facts, that discretion can be exercised in only one way." [Citation.] .....The trial court is under a legal duty to apply the proper law and may be directed to perform that duty by writ of mandate.

Hurtado v. Superior Court (1974) 11 Cal.3d 574, 579; 114 Cal.Rptr. 106, 522 P.2d 666.

C. There is the showing, in one aspect of this matter, that the trial court violated the Constitutional due process rights of the petitioner.

When the trial court ordered sanctions against petitioner, as the plaintiff in those proceedings, without the right to a copy of an itemization of those sanctions, and where the trial court thereupon selected a monetary sum of over eighty thousand dollars without any evidence that this sum existed as the amount of attorneys' fees that the respondents stated, and without any hearing to ever

dispute this monetary sum, the trial court thereupon violated petitioner's due process of law rights under the Unites States Constitution's Fourteenth Amendment [, Section 1].

> [D]ue process requires, at a minimum, that an individual be given a meaningful opportunity to be heard prior to being subjected by force of law to a significant depriviation. .....
>
> Similarly, our own [California Supreme] court has frequently recognized that the most fundamental ingredient of the "due process" guaranteed by our state Constitution is a "meaningful opportunity to be heard."

Randone v. Appellate Department Dep't. (1971) 5 Cal.3d 536, 543; 96 Cal.Rptr. 709, 488 P.2d 13.

D. There existed futility in petitioner requesting the trial court, along with the relevant appellate court, to act in this matter, and there was no other legal remedy when the California Supreme Court denied petitioner's petition for review.

Petitioner appealed to both the

California appellate court, and, after the majority decision being adverse to petitioner, to the State of California Supreme Court. In each instance the appeal was properly prepared, served and filed according to the California rules of court. Because the California Supreme Court reviews only about five percent of the petitions for review filed, petitioner filed a petition for writ of mandate in the California Supreme Court; there being the apparent futility in requesting the lower courts to respond to such a petition. Time was of the essence in this matter and there was no other adequate remedy that appeared available in the California courts.

> Section 1086 of the [California] Code of Civil Procedure provides that the writ of mandate "must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law."*

Phelan v. Superior Court (1950) 35 Cal.2d 363, 366, 372; 217 P.2d 951.

E. The available procedural measures on appeal were exhausted by petitioner.

Petitioner has explained in his last, previous paragraph, that he had properly and timely appealed this matter through the California Courts, and during the appeal to the California Supreme Court, and prior to that appeal being denied in that court, petitioner filed a petition for writ of mandate with that court.

> Having exhausted all the available procedural measures on appeal, the [petitioner] petitioned this [California Supreme] court for an original writ to review the lower court decision.

Randone v. Appellate Department, supra, at page 542 of 5 Cal.3d 536.

F. Petitioner had complied with all the necessary requirements for the issuance of the writ.

An examination of the complete record, inclusive of the fifteen hundred pages of the combined court clerk's transcript, composed of five volumes, and the documents

filed in the California appellate court and California Supreme Court, bound in one volume, and filed with the California Supreme Court in conjunction with the petition for writ of mandate with that court, it can be established that petitioner, with all of the points and authorities to support his petition for writ of mandate, had complied with all the necessary requirements for the issuance of that writ.

> [I]t is settled that where plaintiff shows compliance with the requirements for issuance of the writ, including the lack of any plain, speedy or adequate remedy in the usual course of law, he may be entitled to mandate as a matter of right.

Flora Crane Service, Inc. v. Rose (1964) 61 Cal.2d 199, 203; 37 Cal.Rptr. 425, 390 P.2d 193.

G. There was the procedural requirement of the California Supreme Court to issue the writ.

The California Supreme Court was

procedurally required, under the circumstances represented in the petition for writ of mandate, to issue the writ because it was the only remedy left to require that the trial court do each of the acts that the law specially enjoins and where petitioner has a substantial beneficial interest in the performance of those duties.

> Insofar as here relevant those requirements are (1) a clear and present ministerial duty of the defendant [in this case, the trial court] to do an act which the law specially enjoins (Code Civ. Proc., § 1085) and (2) a substantial beneficial interest of the plaintiff in the performance of that duty (Code Civ. Proc., § 1086).

Flora Crane Service, Inc. v. Ross, supra, at page 203 of 61 Cal.2d 199.

> "The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. . ." (Code of Civ. Proc., § 1086), and where ". . .the petitioner has shown that the respondents [in this case, the trial court] have refused to perform a clear legal duty not involving the exercise of any discretion. Under such circumstances, the writ should issue." [Citation.] [Emphasis original.] Or, as otherwise phrased,

". . .where one has a substantial right to protect or enforce, and this may be accomplished by such a writ, and there is no plain, speedy, and adequate remedy in the ordinary course of law, he is entitled as a matter of right to the writ, or in other words, it would be an abuse of discretion to refuse it." [Citation.]

May v. Board of Directors (1949) 34 Cal.2d 125, 133-134; 208 P.2d 661.

H. The writ was necessary to compel the trial court from preventing the failure of justice.

The trial court's discretion could legally be exercised in only one way, and mandamus was necessary to compel the trial court to exercise that discretion.

[M]andamus has been employed to correct the errors of inferior tribunals and to prevent a failure of justice or irreparable injury where there is a clear right, and there is an absence of any other adequate remedy, as for instance where no appeal lies, or where by the appeal is inadequate. It may also be employed to prevent an abuse of discretion, or to correct an arbitrary action which does not amount to the exercise of discretion." [Citing from 38 Corpus Juris at page 608.]

Bales v. Superior Court (1942) 21 Cal.2d 17, 25; 129 P.2d 685.

I. The writ of mandate is necessary to protect substantial rights, and of which without, substantial injury would occur.

Petitioner is without legal counsel, legal training or expertise, or any formal education. Therefore, acting in pro per, he is working full time on this matter and is, therefore, unemployed. He has sold everything he owns, except for bare essentials. Without the writ of mandate or granting of review of this matter, substantial injury would occur, as petitioner has no option but to proceed in bankruptcy proceedings if this conflict is not resolved in the near future. There is a clear and present ministerial duty upon the part of the trial court and a clear and beneficial right in the petitioner to the performance of that duty.

> "The granting of a writ of mandate.....will be granted..... where necessary to protect a right

> .....when it is shown that some substantial damage will be suffered by the petitioner if said writ is denied." [Citation.]

Parker v. Bowron (1953) 40 Cal.2d 344, 351; 254 P.2d 6

> Two basic requirements are essential to the issuance of the writ: (1) a clear, present and usually ministerial duty upon the part of the respondent [the trial court in this instance] and (2) a clear, present and beneficial right in the petitioner to the performance of that duty.

People ex rel. Younger v. County of El Dorado (1971) 5 Cal.3d 480, 491; 96 Cal.Rptr. 553, 487 P.2d 1193.

J. The undisputed facts in this case, supported by sufficient legal authorities, required the California Supreme Court to command the trial court to act.

The trial court could act in only one way, which it did not.

> Under the undisputed facts of this case, and the legal authorites discussed above, ...it became the clear legal duty of the court to enjoin.....proceedings. Since under the circumstances the discretion of

> the trial court could be legally exercised in only one way, it was an abuse of discretion for the court to.....make the order which it did.

Pacific Indem. Co. v. Superior Court (1966) 246 Cal.App.2d 63, 72; 54 Cal.Rptr. 470.

California Code of Civil Procedure, section 1094.5(b),(c) states as follows:

> The inquiry in such a case shall extend to the questions whether the respondent [the trial court in this matter] has proceeded without, or in excess of jurisdiction.....and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.
>
> Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

/

DATED: SEPTEMBER 30, 1989

Respectfully submitted,

Trent Jason

TRENT JASON, IN PRO PER
PETITIONER,
PLAINTIFF AND APPELLANT

APPENDIX

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May 28, 1987]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

TRENT JASON,

Plaintiff,

vs.

ROADWAY EXPRESS, INC., aka R.E.I., dba ROADWAY EXPRESS, aka ROADWAY, California Corporation; and BOB MORRILL, aka ROBERT MORRILL

Defendants.

No. VCV008736

STATEMENT OF DECISION

The motion of defendants, Roadway Express, Inc., and Robert Morrill, for summary judgment came before this court regularly for hearing on May 14, 1987. Plaintiff, Trent Jason, was present

appearing in propria persona. The defendants, Roadway Express, Inc., and Robert Morrill, were represented by LITTER, [sic.] MENDELSON, FASTIFF AND TICHY by counsel GORDON A. LETTER.

After review of the points and authorities, declarations, exhibits of the parties and the argument of counsel in open court, this court renders its Statement of Decision as follows:

The motion of defendants, Roadway Express, Inc., and Robert Morrill, for summary judgment is granted. There is no triable issue as to any material fact and the moving party is entitled to Judgment as a matter of law. Plaintiff's complaint and first amended complaint are barred under the Doctrine of Unclean Hands.

The plaintiff, Trent Jason, is Ordered to pay to the attorneys for defendant, Roadway Express, Inc., attorneys' fees in the amount of

$81,695.00 pursuant to Code of Civil Procedure, Section 128.5.

The filing of the complaint and first amended complaint in this case was frivolous being totally and completely without merit.

Plaintiff, by his own admission, in completing his application for employment with defendant Roadway Express, Inc.:

a. intentionally omitted addresses where he had lived in the last three years and misrepresented time periods during which he resided at each address listed:

Supporting Evidence: Jason Dep. Exh. No. 100; Jason Dep. 19-21, 111-115, 289, 324, 489-497, 506-507, and 510-511.

b. intentionally misrepresented that he had never been discharged from a job;

Supporting Evidence: Jason Dep. Exh. No 100; Jason Dep. 19-21, 111-115, 289, 324, 496-499, 500-501, 507, 541, 552, and 554-555.

c. falsely represented that he attended Stony Brook University in Stony Brook, New York for three years during the period from 1968 to 1971;

Supporting Evidence: Jason Dep. Exh. Nos. 100 and 105; Jason Dep. 19-21, 32, 111-115, 289, 324, 496-497, and 499-505.

d. intentionally omitted from his list of all previous employment at least nine employers, each of whom employed plaintiff for six months or less and three of whom had discharged plaintiff;

Supporting Evidence: Jason Dep. Exh. No. 100; Jason Dep. 19-21, 111-115, 289, 324, 496-497, 512-513, 523, 532-538, 540-541, 544, 546-548, 551, 554-560, 563, 565-566, 570-572, 575, 584-586, and 591-593.

e. falsely represented that he had been laid off by TOPA Thrift and Loan Association in April 1983 rather than discharged;

Supporting Evidence: Jason Dep. Exh.

No. 100; Jason Dep. 19-21, 111-115, 289, 324, 496-497 and 518-521.

f. falsely stated that he had been self-employed in residential land development and sales when, in fact, he had never been self-employed in that endeavor;

Supporting Evidence: Jason Dep. Exh. No. 100; Jason Dep. 19-21, 111-115, 289, 324, 496-497, 513, 517-518, 527, and 603.

g. intentionally omitted three periods of unemployment lasting approximately twelve, six, and four months.

Supporting Evidence: Jason Dep. Exh. No. 100; Jason Dep. 496-497, 559, 575-576, 585, and 596.

h. during the application process, Jason submitted a six-page handwritten resume to Roadway in which he misrepresented his education at Stony Brook University, his self-employment in real estate development, and his reason for leaving TOPA Thrift and Loan Association in April,

1983.

Supporting Evidence: Jason Dep. Exh. No. 103; Jason Dep. 41-42, 499-505, 513, 517-521, 527 and 603.

i. in response to Roadway's request for Jason's transcript from Stony Brook University, he provided to Roadway a copy of a letter to the University and falsely represented that he had sent the letter, when, in fact, he never did so.

Supporting Evidence: Jason Dep. Exh. No. 105; Jason Dep. 55-57, 116-117, and 501-503.

The foregoing conduct, in the Judgment of the court, justifies award of attorneys' fees incurred by defendant Roadway Express, Inc. in defending this lawsuit.

Counsel for defendants, Roadway Express, Inc., and Robert Morrill, shall prepare the Order granting the motion for summary judgment in this matter and submit the same to this court for signature.

/

DATED: 5/28/87

/

DONALD R. EGAN,
Judge of the
Superior Court

[Filed:

June 17, 1987]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

TRENT JASON,

Plaintiff,

v.

ROADWAY EXPRESS, INC. A.K.A. R.E.I., D.B.A. ROADWAY EXPRESS, A.K.A. ROADWAY, A California Corporation; and BOB MORRILL, A.K.A. ROBERT MORRILL,	)	CASE NO. VCV 008736
	)	JUDGMENT BY COURT UNDER C.C.P. § 437c IN FAVOR OF DEFENDANTS ROADWAY EXPRESS, INC. AND ROBERT MORRILL
Defendants.	)	

On May 14, 1987, the motion of Defendants Roadway Express, Inc. ("Roadway") and Robert Morrill, hereinafter

referred to collectively as "Defendants", for summary judgment and for sanctions pursuant to Code of Civil Procedure section 128.5 in the above-captioned matter came on regularly for hearing in Department DD-2 of this Court, the Honorable Donald R. Egan, Judge presiding. Gordon A. Letter, Esq. of Littler, Mendelson, Fastiff & Tichy, a Professional Corporation, appeared on behalf of Defendants. Plaintiff Trent Jason appeared in propria persona. After hearing the oral argument of cousel and Plaintiff, the Court took this matter under submission.

On May 28, 1987, this Court, having taken this matter under submission, and after fully considering the points and authorities, declarations and exhibits submitted by counsel and Plaintiff, and the oral argument, ruled in favor of Defendants and granted their motion for

summary judgment and for sanctions pursuant to Code of Civil Procedure section 128.5, Defendants having shown by admissible evidence and reasonable inferences therefrom not contradicted by any other evidence or inferences, that Plaintiff's action is barred under the Doctrine of Unclean Hands, that there is no triable issue as to any material fact with respect thereto, that Defendants are entitled to judgment as a matter of law, that the filing of Plaintiff's complaint and first amended complaint was frivolous being totally and completely without merit, that Plaintiff, by his own admissionm in completing his application for employment with Defendant Roadway:

a. intentionally omitted addresses where he had lived in the last three years and misrepresented time periods during which he resided at each address listed;

b. intentionally misrepresented that he had never been discharged from a job;

c. falsely represented that he attended Stony Brook University in Stony Brook, New York for three years during the period from 1968 to 1971;

d. intentionally omitted from his list of all previous employment at least nine employers, each of whom employed Plaintiff for six months or less and three of whom had discharged Plaintiff;

e. falsely represented that he had been laid off by TOPA Thrift and Loan Association in April 1983 rather than discharged;

f. falsely stated that he had been self-employed in residential land development and sales when, in fact, he had never been self-

employed in that endeavor;

g. intentionally omitted three periods of unemployment lasting approximately 12, 6, and 4 months;

h. during the application process, Plaintiff submitted a six-page hand written resume to Roadway in which he misrepresented his education at Stony Brook University, his self-employment in real estate development, and his reason for leaving TOPA Thrift and Loan Association in April, 1983; and,

i. in response to Roadway's request for Plaintiff's transcript from Stony Brook University, he provided to Roadway a copy of a letter to the University and falsely represented that he had sent the letter, when, in fact,

he never did so,

and, that, pursuant to Code of Civil Procedure section 128.5, the foregoing conduct of Plaintiff justifies an award of attorneys' fees incurred by Roadway in defending the lawsuit. Having ordered entry of judgment for Defendants as requested in said motion,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Trent Jason take nothing by his action, that judgment is hereby entered in favor of Defendants Roadway Express, Inc. and Robert Morrill, that Plaintiff Trent Jason pay to the attorneys for Defendant Roadway Express, Inc., attorneys' fees in the amount of Eighty-One Thousand Six Hundred Ninety-Five Dollars and Zero Cents ($81,695.00) pursuant to Code of Civil Procedure section 128.5.

DATED: 06/17, 1989

DONALD R. EGAN
JUDGE OF THE
SUPERIOR COURT

TRENT JASON, In Pro Per
P.O. Box 1841
Pacifica, California 94044
(415) 355 4892

[Filed:

June 12, 1987]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

TRENT JASON, Plaintiff and Appellant, v. ROADWAY EXPRESS, INC., A.K.A. R.E.I., D.B.A. ROADWAY EXPRESS, A.K.A. ROADWAY, A California Corporation; and BOB MORRILL, A.K.A. ROBERT MORRILL; and DOES 1 through 15, Inclusive, Defendants and Respondents.	CASE NUMBER VCV 008736 NOTICE OF APPEAL; NOTICE DESIGNATING PAPERS AND RECORDS FOR INCORPORATION IN RECORD ON APPEAL; REQUEST FOR REPORTER'S TRANSCRIPT ON APPEAL [Cal Rules of Ct, Rules 1 (a), 4(a), 5 (a)]

To the clerk of the above entitled court:

NOTICE IS HEREBY GIVEN that Plaintiff

appeals to the Court of Appeal for the Fourth Appellate District, from Division Two, the order of the above entitled court entered herein on May 28, 1987, in favor of Defendants, providing as follows: The granting of summary judgment in favor of Defendants Roadway Express, Inc. and Robert Morrill and the order that Plaintiff Trent Jason pay to attorneys for Defendant Roadway Express, Inc., attorneys' fees in the amount of $81,695.00 pursuant to Code of Civil Procedure, Section 128.5.

NOTICE IS FURTHER GIVEN that Plaintiff designates the following papers or records on file or lodged with the clerk of the above entitled court which Plaintiff desires incorporated in the record on appeal:

* First Amended Complaint for fraud and deceit;
* Answer of Defendants Roadway Express, Inc. and Robert Morrill to first

amended complaint for fraud and deceit;

* Notice of Motion and Motion by Defendants Roadway Express, Inc. and Robert Morrill for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437c and for sanctions pursuant to C.C.P. section 128.5;

* Defendants Roadway Express, Inc.'s and Robert Morrill's Statement of Undisputed Material Facts in support of motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437c;

* Memorandum of Points and Authorities of Defendants Roadway Express, Inc. and Robert Morrill in support of motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section

128.5;

* Declaration of Robert A. Morrill in support of Defendants' motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437c;
* Declaration of Gordon A. Letter in support of Defendants' motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437(c) and for sanctions pursuant to C.C.P., section 128.5;
* Amended Statement of Undisputed Material Facts of Defendants Roadway Express, Inc. and Robert A. Morrill in support of motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437c;
* Plaintiff's Amended Opposition to Defendants Roadway Express, Inc.'s

and Robert Morrill's motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437c and for sanctions pursuant to C.C.P. section 128.5;

* Motion for order of payment of expenses as sanctions against Defendants Roadway Express, Inc. and Robert Morrill, and their attorneys, Gordon A. Letter and Robert Millman pursuant to C.C.P. section 128.5;
* Declaration of Trent Jason in support of motion for order for payment of expenses as sanctions against Defendants Roadway Express, Inc. and Robert Morrill, and their attorneys, Gordon A. Letter and Robert Millman pursuant to C.C.P. section 128.5;
* Plaintiff's Statement of Disputed and Undisputed Material facts opposing motion for summary judgment or

alternatively summary adjudication of issues pursuant to C.C.P. section 437c and for sanctions pursuant to C.C.P. section 128.5;

* Amended Memorandum of Points and Authorities of Plaintiff Trent Jason in support of opposition to Defendants Roadway Express, Inc.'s and Robert Morrill's motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 128.5;

* Declaration of Trent Jason in support of Plaintiff's amended opposition to Defendants Roadway Express, Inc.'s and Robert Morrill's motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437c and for sanctions pursuant to C.C.P. section 128.5;

* Reply of Defendants Roadway Express,

Inc. and Robert Morrill to Plaintiff's opposition to motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437c; and opposition to Plaintiff's request for order for payment of expenses as sanctions against Defendants Roadway Express, Inc. and Robert Morrill, and their attorneys, Gordon A. Letter and Robert Millman pursuant to C.C.P. section 128.5;

* Supplemental Declaration of Gordon A. Letter in support of Defendants' motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437c and for sanctions pursuant to C.C.P. section 128.5;

* Supplemental Declaration of Robert A. Morrill in support of Defendants' motion for summary judgment or

alternatively summary adjudication of issues pursuant to C.C.P. section 437c;

* Plaintiff's Response to Reply of Defendants Roadway Express, Inc. and Robert Morrill to Plaintiff's opposition to motion for summary judgment or alternatively summary adjudication of issues pursuant to C.C.P. section 437c;
* Statement of Decision (by Judge of the Superior Court);
* Judgment by Court under C.C.P. section 437c in favor of Defendants Roadway Express, Inc. and Robert Morrill.

NOTICE IS FURTHER GIVEN that Plaintiff requests the preparation of a reporter's transcript of the oral proceedings in this action.

Dated: June 10, 1987

/

Trent Jason

TRENT JASON,
Plaintiff, In Pro Per

NOT FOR PUBLICATION [Filed: May 09, 1989]

COURT OF APPEAL, FOURTH DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

TRENT JASON, Plantiff and Appellant, v. ROADWAY EXPRESS, INC., et al., Defendants and Respondents.	E004389 (Super.Ct.No. VCV-8736) O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Donald R. Egan, Judge. Affirmed.

Trent Jason, in pro. per., for Plaintiff and Appellant.

Littler, Mendelson, Fastiff & Tichy and Gordon A. Letter for Defendants and Respondents.

/

Plaintiff Trent Jason appeals from a summary judgment in favor of defendant Roadway Exrpess. In granting the summary judgment, the trial court found that the relief sought by Mr. Jason was barred by the affirmative defense of unclean hands. It therefore dismissed the action and awarded defendant Roadway Express its attorneys' fees and costs of $81,695.00 pursuant to Code of Civil Procedure section 128.5. On Appeal, Roadway requests additional sanctions for the cost of defending a frivolous appeal. (Code Civ. Proc., § 907.)

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SEE DISSENTING OPINION ATTACHED

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FACTS

In July 1985, plaintiff Trent Jason responded to a newspaper advertisement for dockworkers at Roadway's terminal in Adelanto, California. The advertisement promised a wage of $11 per hour and stated: "Be sure to bring all past employment information and be prepared to fully complete an employment application." Mr. Jason then went to Adelanto and applied for the position.

Roadway's pre-employment process consisted of five steps: (1) signing the employment register to obtain an application for employment; (2) completion and submission of the application; (3) a group interview followed by individual meetings; (4) a security interview, including a lie detector test; and (5) a medical examination. Mr. Jason completed these steps and was eventually employed as a dockworker at the wage rate of $11 per hour. He was

employed from September 4, 1985 through October 29, 1985.

According to Mr. Jason, he was terminated because he refused to become a full-time employee of the company. Full-time employees were required to join the Teamsters Union and serve a one-year probationary period. Most importantly, under the applicable Teamsters labor agreement, the wage rate of a probationary employee was 70% of the existing wage rate. This meant that Mr. Jason would receive $9.80 per hour instead of $11 per hour during the probationary period. He therefore refused to accept full-time employment on this basis.

Mr. Jason filed his complaint on October 19, 1985. It alleged that Roadway engaged in fraudulent employment practices by failing to disclose, either in its advertisements or in interviews, that the dockworker position was a temporary position,

or that a pay decrease would be required for the first year in order to obtain permanent employment.

After removal to federal court, the action was remanded when Mr. Jason filed a first amended complaint for fraud and deceit. That complaint included allegations that the company had not disclosed the union contract and the wage decrease. Also included were allegations that Mr. Jason had given up his prior home and moved to Adelanto in reliance on the offer of employment.

In investigating the complaint, Defendant Roadway discovered that Mr. Jason had substantially falsified his employment application. Specifically, the trial court found that Mr. Jason (1) intentionally omitted addresses where he had lived during the preceding three years and the time he had lived during the preceding three years and the time he had lived at each address;

(2) falsely represented he had never been discharged from a job; (3) omitted the names of nine previous employers; and (4) omitted three periods of unemployment. Most importantly, Mr. Jason falsely represented that he had attended Stony Brook University in New York.

Significanly, Mr. Jason admitted that he falsified the application. His stated reason for the falsification was that he sought to simplify the application and increase the likelihood that he would be hired. Since no factual question was presented, Defendant Roadway filed its summary judgment motion, contending that the entire action was barred by its affirmative defense of unclean hands. The trial court agreed and granted the summary judgment motion.

In addition, the trial court found that the entire action was frivolous under Code of Civil Procedure section 128.5. It

therefore awarded defendant Roadway its costs and attorneys' fees incurred in defending the action in the sum of $81,695. On appeal, Roadway seeks additional attorneys' fees on grounds that the appeal is frivolous under Code of Civil Procedure section 907.

THE UNCLEAN HANDS DOCTRINE

1. General Principals.

Ancient equitable principals deny affirmative relief to a plaintiff who has committed misconduct in the transaction which is the basis of his lawsuit. (See Annot. (1919 4 A.L.R. 44.) Modern practice allows this equitable defense to be used to defend an action at law. (Fiberboard Paper Products Corp. v. East Bay Union of Machinists (1964) 227 Cal.App.2d 675, 728.) If no factual issues are involved, the existence of the affirmative defense can be determined by a summary judgment motion. (Joslin v. Marin Mun. Water Dist. (1967)

67 Cal.2d 132, 148-149.) Here, the trial court considered the admitted misrepresentations in the employment application and found that they establish the unclean hands defense as a matter of law.

2. Relationship of the Misconduct to the Transaction.

On appeal, Mr. Jason first argues that the unclean hands doctrine should not apply because his misconduct does not relate to the transaction in issue.

It has long been held that the conduct which precipitates the application of the unclean hands doctrine must be related to the particular transaction. (Moriarty v. Carlson (1960) 184 Cal.App.2d 51, 56-57; 7 Witkin, Summary of Cal. Law (8th ed. 1974) Equity, § 10, pp. 5235-5236.) "Related" means that the misconduct "must pertain to the very subject matter involved and affect the equitable relations between the litigants." (Fiberboard Paper Products Corp. v.

East Bay Union of Machinists, supra, 227 Cal.App.2d at p. 728.) In Fiberboard, the company sued a striking union, seeking profits allegedly lost because of the acts of the strikers. The union claimed that the acts were induced by fraudulent misrepresentations made by the company to the union "relative to the negotiations with respect to the collective bargaining agreement." (Id., at pp. 688, 725.) Considering whether the allegedly fraudulent misrepresentations were "related" to the union's conduct, the court found that they were not, saying that the transaction before the court "involves whether defendants were guilty of tortious conduct. It would amount to a straining of the doctrine to hold that defendants could escape liability for tort because Fiberboard breached its contract or because it was guilty of fraudulent misrepresentations. The wrong done to Fiberboard, which is the basis of its cause of action

for damages, is independent of the transaction arising from the alleged breach of contract or misrepresentations. To hold otherwise would be to sanction an assault upon a person who has perpetrated a fraud upon or breached a contract with the assaulter. Retribution for Fiberboard's breach of contract of fraudulent misrepresenation, if such existed, cannot be vindicated under the doctrine of unclean hands." (Id., at p. 729.)

In this case, it is clear that the misconduct pertains to the subject matter of the litigation. The subject matter is the hiring process. The employment application is, of course, the heart of the hiring process. The terms and conditions of the proposed contract of employment, including the wage rate for the position and the requirement of union memebership, are also central to the hiring process. Assuming Roadway was not being candid about the terms

of the dockworker position, Mr. Jason was, at the same time, lying in order to obtain that position.

We think that it is equally clear that Mr. Jason's misconduct affected the equitable relations between the litigants. Assuming the conduct of Roadway was fraudulent, it would have been actionable by an injured party. Plaintiff could not have been an injured party if he had not falsified his application because he would not have been hired. Plaintiff's misconduct therefore put him in a position where he was allegedly injured by Roadway's assumed fraud. His fraud affected Roadway, and Roadway's alleged fraud affected him. The balance, or the equitable relationship between them, was affected by the conduct of each of them.

More generally, the term "related" implies a logical or casual connection. (Arizona Property & Cas. Ins. Guar. Fund v. Helme (Ariz. 1987) 735 P.2d 451, 456.) This

connection exists when facts used to prove one claim would also be used, at least in part, to prove the second claim. (Wham-O-Mfg. Co. v. Paradise Manufacturing Co. (9th Cir. 1964) 327 F.2d 748, 752 fn. 5.) These tests are also met here since proof of either claim would necessarily involve proof of facts concerning the pre-employment process at Roadway. We therefore conclude that the conduct of the parties during the hiring process was inextriably interrelated. The exception for unrelated transactions is therefore inapplicable, and the trial court correctly applied the unclean hands doctrine.

3. Plaintiff's Intent.

Mr. Jason next contends that the unclean hands doctrine was inapplicable because he did not intend to defraud, injure or prejudice defendant Roadway. He relies on Moriarty v. Carlson, supra, 184 Cal.App.2d 51 and Stone v. Lobsien (1952) 112 Cal.App.2d 750. In Moriarty,

plaintiffs filed a petition in bankruptcy and failed to include

certain property on their bankruptcy schedules. There was no finding by the referee that plaintiffs intended to defraud their creditors, and there was evidence that there was an innocent misunderstanding. The court said: "Had the trial court been convinced that there was actual or intentional fraud on the part of the plaintiffs toward their creditors, the views of that court [that the doctrine was applicable] may well have been different." (Moriarity, supra, at p. 56.) In Stone, the court said: "it is probably the law that the unclean hands doctrine will bar a party from relief in equity where there is a mere intent to defraud without actual fraudresulting." (Stone, supra, at pp. 757-758.) This sentence is followed by the sentence relied on by Mr. Jason: "But that rule applies

as a matter of law only where the evidence is susceptible of but the one inference that the transaction was entered into with the intent to defraud." (Ibid., emphasis added.)

In other words, Moriarity and Stone apply to the situation where there is an actual intent to defraud, whether the fraud is successful or not. We think it is equally true that a successful fraud is misconduct whether the result was intended or not. This is particularly true when the only evidence of intent is plaintiff's own testimony. Plaintiff's subjective state of mind is irrelevant where there is an actual, successful misconduct.

4. Actual Injury or Prejudice.

Mr. Jason next argues that Roadway never suffered any loss because of the false employment application. In essence, he argues that he was a good employee, well qualified for the job, and that no harm

resulted from his conduct. He then cites Republic Molding Corp. v. B. W. Photo Utilities (9th Cir. 1963) 319 F.2d 347 for the proposition that the extent of actual harm is relevant. While the parties then argue about the minor actual damages that each allegedly sustained, we think the issue is the integrity of the employment process itself.

Defendant Roadway, for reasons of its own, established and followed a thorough and detailed employment screening process. Presumably, the process was intended to allow it to secure competent, honest employees. The misconduct and dishonesty of job applicants defeats this legitimate goal. The actual harm occurs when Roadway, despite its best efforts at screening applicants, obtains a dishonest employee. As noted above, intent to injure becomes irrelevant when actual harm results.

5. Questions of Fact.

Mr. Jason next argues that application of the unclean hands doctrine raises primarily factual issues that should have been decided by the jury. While this is generally true, the question arose here on summary judgment because Mr. Jason admitted that he falsified his employment application. The question of the legal effect of the admitted facts was properly ruled on by the trial court, as discussed above. We find that the trial court properly decided the legal applicability of the unclean hands doctrine based on the admitted facts. A judgment of dismissal on summary judgment was therefore proper.

AWARD OF ATTORNEYS' FEES AND COSTS

The trial court found the action frivolous pursuant to Code of Civil Procedure section 128.5. Under this statute, the court may order a party to pay the other party's reasonable expenses, including attorneys' fees, if the court finds that the party

filed the action in bad faith. Accordingly, the filing of a frivolous lawsuit can lead to an award of the entire costs of defense. (Lesser v. Huntington Harbor Corp (1985) 173 Cal.App.3d 922, 930.) If a party knows or should know that the facts or law, or both, preclude the action or any recovery, and the party nevertheless proceeds, the court may find the action frivolous.

In this case, the trial court considered the misrepresentations of the employment application and found the action frivolous. Although express findings were not made, the trial court apparently thought that "any reasonably attorney would agree that the action is totally and completely without merit" because Mr. Jason admitted the facts necessary to establish the affirmative defense. (Winick Corp. v. County Sanitation Dist. No. 2 (1986) 185 Cal.App.3d 1170, 1177.) The trial court had discretion to make this determination

under section 128.5 and we cannot say that the decision was an abuse of that discretion.

Mr. Jason vigorously argues, however, that his complaint is not frivolous because he has a valid cause of action against Roadway. But that is not enough. The point is that he filed a lawsuit which, even if meritorious, is blocked by an affirmative defense. Since he knew that he falsified his employment application, he knew or should have known of the existence of the affirmative defense. His position is the same as the attorney who refuses to dismiss his action after he discovers that it is barred by the statute of limitations. (Van Berkel v. Fox Farm and Road Mach. (D. Minn. 1984) (581 F.Supp. 1248.) While Mr. Jason is proceeding in pro. per., he is still held to the standards applicable to an attorney. (Doran v. Dreyer (1956) 143 Cal.App.2d 289, 290.) It is therefore presumed that he filed the lawsuit knowing that his own

misconduct provided an affirmative defense to the action. Accordingly, as discussed above, the trial court did not abuse its discretion in awarding the costs of defense as sanctions.

ATTORNEYS' FEES ON APPEAL

Defendant Roadway asks for an award of additional attorneys' fees on appeal because it claims that the appeal is also frivolous. Code of Civil Procedure section 907 states: - "When it appears to the reviewing court that the appeal was frivolous or taken soley for delay, it may add to the costs on appeal such damages as may be just." In acting under this section, this court must use its own discretion to decide whether the appeal is frivolous. This determination does not depend on the trial court's finding, for "[a]ffirmance of sanctions does not itself justify further sanctions." (Winick Corp. v. County Sanitation Dist. No. 2, supra, 185 Cal.App.3d at p. 1182.)

In support of its request, Roadway urges us to apply the objective test described in In re Marriage of Flaherty (1982) 31 Cal.3d 637, 649: "'whether any reasonable person would agree that the point is totally and completely devoid of merit, and, therefore, frivolous.'" Roadway points out that the arguments advanced here are the same arguments that were unsuccessful below. In particular, Mr. Jason has not even alleged any factual conflicts that make the granting of the summary judgment improper. Accordingly, Roadway argues that the same frivolous claim is being reargued in this court and that the result should be the same.

As Flaherty makes clear, both subjective and objective tests are relevant. (In re Marriage of Flaherty, supra, 31 Cal.3d at pp. 649-650.) "The two standards are often used together, with one providing evidence of the other, and both are relevant to a determination that an appeal is frivolous."

(Otworth v. Southern Pac. Transporation Co. (1985) 166 Cal.App.3d 452, 461.)

Objectively, Roadway's argument that the affirmative defense was so clear that no reasonable person could think otherwise is an attractive argument. But, as Winick states, we should also consider whether, subjectively, the appeal is prosecuted for an improper motive. There is no specific evidence of motive in the record here and we are reluctant to impute an improper motive from the general statements of the parties. We are not inclined to grant the request of sanctions unless the record as a whole demonstrates that both objective and subjective factors, including an improper motive, are present. Since no such motive appears here, the request for additional sanctions on appeal is denied. (Winick Corp. v. County Sanitation Dist. No. 2, supra, 185 Cal.App.3d at pp. 1181-1183.)

DISPOSITION

The judgment is affirmed. Respondent Roadway's request for additional sanctions on appeal is denied.

NOT FOR PUBLICATION

/s/ Hollenhurst
J.

I concur:

/s/ Campbell
P.J.

I respectfully dissent:

I. SUMMARY JUDGMENT

A. Not Part of Same Transaction.

On appeal, plaintiff argues that the unclean hands doctrine does not apply because the "Unconscionable" conduct by plaintiff which was used by defendants as the basis for the affirmative defense of unclean hands is not related to the harm for which plaintiff seeks recovery.

"Traditionally, the doctrine of unclean hands is invoked when one seeking relief in equity has violated conscience, good faith or other equitable principles in his prior conduct. [Citations.]" (Fiberboard Paper Products Corp. v. East Bay Union of Machinists (1964) 227 Cal.App.2d 675, 727.)

"[I]t is not every wrongful act nor even every fraud which prevents a suitor in equity from obtaining relief. The misconduct which

brings the clean hands doctrine into operation must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants. Accordingly, relief is not denied because the plaintiff may have acted improperly in the past or because such prior misconduct may indirectly affect the problem before the court. [Citations.]. . . [¶] 'The trial of the issue relating to clean hands cannot be distorted into a proceeding to try the general morals of the parties.'" (Id., at pp. 728-729, quoting Boericke v. Weise (1945) 68 Cal.App.2d 407, 419.)

The real issue, as plaintiff has pointed out, is whether plaintiff's falsifications on the employment application were so related to the harm for which plaintiff seeks recovery as to bar plaintiff's action.

"The essence of the 'clean hands'

doctrine is not that the plaintiff's hands are dirty but 'that the manner of dirtying renders inequitable the assertion of such rights against the defendant.' [Citation.]" Estates of Blanco (1978) 86 Cal.App.3d 826, 834.) Thus, a defendant has been allowed to raise the defense in a suit by a subcontractor to foreclose on a mechanic's lien where the evidence supported a finding that the general contractor and the subcontractor had conspired to perpetrate a fraud in submitting bills to the defendant. (Burton v. Sosinsky (1988) 203 Cal.App.3d 562, 573. Similarly, a husband who obtained a divorce in collusion with his wife was not permitted to use that collusion as a basis for having the divorce set aside, after her death, so that he could acquire title to what had been the community property of the parties. (Katz v. Karlsson (1948) 84 Cal.App.2d 469, 475-475.)

The holding in Fiberboard Paper Prod-

ucts Corp. v. East Bay Union of Machinists, supra, 227 Cal.App.2d 675, discussed by the majority, is instructive on the availability of the defense. In that case, plaintiff brought a suit for damages against various unions whose members had used force and threats to enforce a strike at plaintiff's manufacturing plant following plaintiff's firing of a certain category of employee. The appellate court refused to permit the defendant unions to raise the defense of unclean hands based on plaintiff's fraudulent misrepresentations regarding negotiations on a collective bargaining agreement.

In its ruling the appeals court concluded that "the assertion of unclean hands is not directed to the 'transaction' before the court in the instant case. That transaction involves whether defendants were guilty of tortious conduct. It would amount to a straining of the doctrine to hold that defendants could escape liability for tort

because Fiberboard breached its contract or because it was guilty of fraudulent misrepresentations. The wrong done to Fiberboard, which is the basis of its cause of action for damages, is independent of the transaction arising from the alleged breach of contract or misrepresentations. To hold otherwise would be to sanction an assault upon a person who has perpetrated a fraud upon or breached a contract with the assaulter. Retribution for Fiberboard's breach of contract or fraudulent misrepresentations, if such existed, cannot be vindicated under the doctrine of unclean hands." (227 Cal.App.2d at p. 729; emphasis added.)

The same reasoning applies in the present case. The basis of plaintiff's suit is the alleged misrepresentations by defendants as to the terms and conditions of employment; there was no logical or casual connection between the admitted falsifica-

tions by plaintiff on his employment application and the actions of the defendants.

If defendants had negligently run a truck over plaintiff during the time plaintiff was working for them it would be apparent that they could not avoid liability by raising his misrepresentations on his employment application as a defense. Similarly, the alleged fraud of defendants was independent of any wrongdoing by plaintiff.

Defendants speculate that if plaintiff had not misrepresented his employment history, he would never have been hired by defendants. The implication is that without his misrepresentations he would not have been in a position to file his lawsuit, and that this provides sufficient basis for applying the defense of unclean hands.

This faulty reasoning represents a further misunderstanding of the function of the equitable defense of unclean hands.

Defendants cannot avoid liability by using the defense of unclean hands as a vehicle for examining all the events which preceded the suit against them.

"Relief is not denied because the plaintiff may have acted improperly in the past or because such prior misconduct may indirectly affect the problem before the court. A party may have relief in connection with a transaction itself untainted although his original title may have been tainted by improper conduct." (Moriarty v. Carlson (1960) 184 Cal.App.2d 51, 57; Carman v. Athearn (1947) 77 Cal.App.2d, 598.)

Plaintiff's false statements related only to his qualifications for employment with defendant company. There was nothing in plaintiff's actions which induced or affected the alleged fraud by defendants which is the basis of plaintiff's suit.

"It is settled that the act upon which

equity may refuse relief to a plaintiff because he does not come into court with clean hands must prejudicially affect the rights of the person against whom the relief is sought so that it would be inequitable to grant such relief." (Wiley v. Wiley (1943) 59 Cal.App.2d 840, 842.) The only way in which plaintiff's act "prejudicially affected" the rights of defendants was by calling defendants to account for their hiring practices. That is hardly a result a court of equity should choose to bar through application of an equitable defense.

Defendants have not shown the relationship between plaintiff's lawsuit and his wrongdoing which must exist before the equitable defense of unclean hands can prevail.

B. Failure to Consider Relative Culpability.

Once it is established that a legally

proximate nexus exists between the wrongful acts of the plaintiff and the basis of plaintiff's lawsuit, the courts should next consider the relative culpability of the parties. (30 Cal.Jur.3d, Equity § 29, p. 522.) Equitable relief will be granted despite improper conduct on the part of the plaintiff if it is shown that the defendant is the party most at fault, as, for example, where plaintiff's wrongful conduct was induced by defendant. (Young v. The Young Holding Corp. (1938) 27 Cal.App.2d 129, 152.)

In the present case the trial court failed to evaluate the relative culpability of the parties. The admitted negligible harm to defendant resulting from plaintiff's misrepresentations on his employment applications should have been weighed against the harm to plaintiff and to the public resulting from the misrepresentations of defendants. This was not done by the trial court.

Nor did the trial court consider "the extent of actual harm caused by the conduct in question, either to the defendant or to the public interest, . . ." (Republic Molding Corporation v. B.W. Photo Utilities (9th Cir. 1963) 319 Fed.2d 347, 349-350.)

The trial court's application of the unclean hands doctrine was completely without basis in fact or law and should be reversed.

II. SANCTIONS UNDER SECTION 128.5

A. Insufficient Evidence That Costs Were Incurred.

Code of Civil Procedure section 128.5 provides that a trial court may order a party to pay reasonable expenses incurred by another party as a result of "bad-faith actions or tactics that are frivolous or soley intended to cause unnecessary delay. . . ." (Subd. (a).) (Emphasis added.) "Frivolous" is defined to mean "(A) totally and completely without merit or (B) for the

sole purpose of harassing an opposing party." (Subd. (b)(2).) (Emphasis added.)

"A motion is frivolous and in bad faith where any reasonably attorney would agree such motion is totally devoid of merit. (Citations.)" (Staples v. Hoefke (1987) 189 Cal.App.3d 1397, 1418.)

I have indicated my view that the trial court erred in granting defendants' motion for summary judgment. Adoption of my view by the majority would provide conclusive proof that plaintiff's lawsuit was not frivolous under the statute, and would require automatice reversal of the award of sanctions.

Even if the grant of summary judgment is affirmed, however, there remain serious due process deficiencies in the trial court's order awarding more than $81,000 in attorneys' fees to defendants.

In the first place, the only evidence presented at trial on the costs associated

with the suit was a declaration of defendants' attorney in which he stated: "I have reviewed all of the invoices billed to [defendants] by [their attorneys] for the period from November 1, 1985 through the present, in connection with the defense of [plaintiff's] lawsuits. The total fees to date are approximately $113,408.75. The total expenses to date are approximately $7,858.32. I estimate that the amounts for legal fees and expenses expended by [defendants] in defending [plantiff's] wrongful termination lawsuit to be $31,213.50 and $1,081.71, respectively. By subtracting these amounts from the above total fees and expenses incurred by [defendants] for this entire action are $82,195.25 and $6,776.61, respectively, for a total of $88,971.86 for both fees and expenses."

The declaration of defendants' counsel was not sufficient to support any award, let alone a grossly inflated amount for a suit

which did not even go to trial. Code of Civil Procedure section 128.5 authorizes the court to order a party "to pay any reasonable expenses, including attorney's fees, incurred by another party. . . ." (Code Civ. Proc., § 128.5, subd. (a).)

As an element of due process before plaintiff's property can be taken from him, there must be a hearing, evidence in support of the sanctions sought, and the opportunity to object to insufficient evidence that the expenses were in fact "incurred." There is no proof here of "reasonableness," no evidence such exorbitant fees were in fact paid.

B. Failure to Provide Statement of Conduct and Circumstances Justifying the Orders.

More important, however, is the trial court's failure to comply with that part of the statute which requires that "[a]n order imposing expenses shall be in writing and

shall recite in detail the conduct or circumstances justifying the order." (Code Civ. Proc., § 128.5, subd. (c); emphasis added.) Here the trial court found only that plaintiff's conduct in misrepresenting his employment experience "justifies an award of attorneys' fees incurred by Roadway in defending the lawsuit."

Under Code of Civil Procedure section 128.5, the "award of expenses must be written and specify the reasons for the award. . . . An order bereft of this statement of reasons cannot stand. [Citation.] [¶] . . . [D]ue process requires that the court provide the party with a written statement of reasons for the award when the fees are imposed as 'sanctions.' [Citation.] This requirement of written reasons affords a safeguard against an abuse of the trial court's discretion and permits appellate review of that discretion." (Hearst v. Ferrante (1987) Cal.App.3d 201, 204; emphasis added.)

"An order which merely recites that a particular action was 'frivolous' and thereby has imposed sanctions is insufficient. [Citation.]" (Staples v. Hoefke, supra, 189 Cal.App.3d 1397, 1418.)

Under section 128.5, "once a party shows that his or her action was arguably meritorious . . . the logical conclusion is that the party's motive was probably not solely to harass or cause unnecessary delay, and that sanctions are probably not warranted. Of course, the fact that an action is arguably meritorious is not conclusive proof that the action was not brought solely to harass or delay. However, the party moving for sanctions has the burden of proving that the arguably meritorious action was taken for improper motives." (Weisman v. Bower (1987) 193 Cal.App.3d 1231, 1237; emphasis original and added.)

In the present case the trial court made no finding that plaintiff's cause of

action was lacking merit; the only finding was that there was an equitable defense which applied to the case.

Defendants had the burden of proving that plaintiff's arguably meritorious case was filed for improper motives, a burden which they did not meet. The only claims made by defendants were that plaintiff's action "was barred by his unclean hands based upon facts known to Jason, but not to Defendants," and the plaintiff "desired to milk a monetary settlement from Roadway." This evidence is insufficient grounds on which to base an award of sanctions. It does not respond to the statutory requirement of improper motive or brought solely to harass or delay.

"'The court must state the specific circumstances giving rise to the award of attorneys' fees, and state with particularity the basis for finding those circumstances amount to "tactics or actions not based on

good faith which are frivolous or which cause unnecessary delay." The court's written order should be more informative than a mere recitation of the words of the statute. . . .'" (Lieppman v. Leiber (1986) 180 Cal.App.3d 914, 921, quoting Fegles v. Kraft. (1985) 168 Cal.App.3d 812, 816.) That was not done in this case, and the resulting order of the trial court was deficient.

III. DEFENDANTS' REQUEST FOR SANCTIONS ON APPEAL PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 907

Defendant Roadway asks for an award of additional attorneys' fees on appeal because it claims that the appeal is also frivolous. Code of Civil Procedure section 907 states: "When it appears to the reviewing court that the appeal was frivolous or taken soley for delay, it may add to the costs on appeal such damages as may be just."

In acting under this section, this court

must use its own discretion to decide whether the appeal is frivolous.

The California Supreme Court has indicated that both subjective and objective criteria are relevant in determining whether to impose sanctions on appeal. (In re Marriage of Flaherty (1982) 31 Cal.3d 637, 649.) "The subjective standard looks to the motives of the appellant and his or her counsel. . . . [¶] The objective standard looks at the merits of the appeal from a reasonable person's perspective. . . . [¶] The two standards are often used together, with one providing evidence of the other. Thus, the total lack of merit of an appeal is viewed as evidence that appellant must have intended it only for delay. [Citations.]" (Id., at p. 649.

"[A]n appeal should be held to be frivolous only when it is prosecuted for an improper motive--to harass the respondent

or delay the effect of an adverse judgment --or when it indisputably has no merit-- when any reasonable attorney would agree that the appeal is totally and completely without merit." (Id., at p. 650.)

There is no evidence of improper motive in this record. The request for sanctions on appeal is properly denied. (Winick Corp. v. County Sanitation Dist. No. 2 (1986) 185 Cal.App.3d 1170, 1181-83.)

NOT FOR PUBLICATION

/s/ Staniforth *

*Retired Associate Justice of the Court of Appeal sitting under assignment by the Chairperson of the Judicial Council

[FILED:

JULY 20, 1989

ORDER DENYING REVIEW

Fourth Appellate District, Division Two, No. E004389

S010512

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

I N B A N K

TRENT JASON, Appellant

v.

ROADWAY EXPRESS INCORPORATED Et Al.,

Respondents

Appellant's petition for review DENIED. Panelli, J., is of the opinion the petition should be granted.

LUCAS

CHIEF JUSTICE

[FILED:

SEP 27, 1989]

No. S011124

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

I N B A N K

TRENT JASON, Petitioner,

v.

SUPERIOR COURT OF THE COUNTY OF SAN BERNARDINO, Respondent

Petition for writ of mandate DENIED.

L. U C A S
Chief Justice